

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4415 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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M I HAVA

Versus

NAVINBHAI SHASTRI

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Appearance:

None present for Petitioner

MR YF MEHTA for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. The matter was called out for hearing in the first round and second round in the first sitting and in the third round in the second sitting. None put appearance on behalf of the petitioner.
2. On 27th June, 1997 none was present for the petitioner though the matter was called out for hearing

in three rounds. After hearing the counsel for the respondent and after perusing the special civil application, order was kept C.A.V.. After the aforesaid order was passed, Mr. M.I. Hawa appeared in the court. Mr. Hawa is also the petitioner in this case. He was heard, but the matter was deferred to 8th July, 1997 as he prayed for time to cite authorities on the question of maintainability of the special civil application. On 8th July, 1997, again the matter was called out for hearing in three rounds. None was present for the petitioner, and as such, one more indulgence was granted to the petitioner and that is how the matter has come up on 11-7-1997 and after hearing counsel for the respondent No.1 the order was kept C.A.V..

3. The petitioner, an Advocate, Solicitor & Notary, filed this Sp. C.A. under Article 226 of the Constitution and prayer has been made for a writ of mandamus or any other writ, order or direction to the respondent to make payment of bills/statements submitted by the petitioner as listed in annexure 'B' hereto totalling to Rs.2,70,749-20 together with 18% interest from the date of the Bills till payment.

4. Reply to the Sp. C.A. has been filed by the respondents and they have contested the claim of the petitioner.

5. The facts of the case, in brief, are that the petitioner was appointed as Additional Government Pleader in the year 1985 to represent the State of Gujarat in this Court. The petitioner conducted many matters under different statutes entrusted to him by the State Government. The appointment of the petitioner stood terminated from May, 1989. The petitioner was required to submit the bills in respect of matters attended by him on completion thereof and scale of fees was prescribed by the Government by its Resolution, a copy of which has been submitted as annexure 'A'. The petitioner submitted bills in the proforma along with the copies of petitions, reporting letters etc. during the year 1985, 1986, 1987, 1988 and 1989. The payments were made from time to time by the respondents depending upon the availability of grant etc. of the bills of the petitioner, but number of bills remained pending on account of procedural delay and non-availability of staff etc. in the legal department.

6. The grievance of the petitioner is that his assignment was discontinued for political reasons and he claimed full fees in respect of the matters attended by him but were required to be transferred. The dispute

was, however, resolved by mediation of learned Advocate General Shri J.M. Thakore whose Award was accepted by the Government and the petitioner, and the petitioner was paid the fees awarded by the said learned Mediator.

7. The petitioner submitted that the officers in the legal department did not like the petitioner's action of vindicating his rights through mediation of learned Advocate General and with a view to harass the petitioner, have deliberately withheld scrutiny and sanctioning of petitioner's bills many of which were submitted in the year 1985 to 1988 and total of this amount, as stated earlier, is Rs.2,70,749-70. The petitioner wrote letters from time to time to the respondents for the payment of the aforesaid bills and reference in this respect has been made to the correspondences of September, 1989, December, 1989, December, 1990, March, 1991, January, 1992 and November, 1992. When nothing has been done despite of the requests, he filed this Sp. C.A..

8. The respondents contested this Sp. C.A. both by raising preliminary objections as well as on merits. The following preliminary objections have been raised by the respondents in the reply.

(i) The claim of the petitioner pertains to money i.e. the payment of bills of the professional fees, and as such, this writ petition is not maintainable under Article 226 of the Constitution.

(ii) This writ petition suffers from vice delay and laches. For recovering the outstanding amount of bills and for filing the suit, the period of limitation would have been three years whereas the claim in this Sp. C.A. has been made by the petitioner for the payment of his bills for the years 1985, 1986, 1987 and 1988. So the claim is made after about 8 years, 7 years, 6 years and 5 years respectively for which no explanation whatsoever has been given.

(iii) There are disputed questions of fact in the present case, and as such, the proper remedy would have been for the petitioner to file a civil suit and not this Sp. C.A. under Article 226 of the Constitution.

(iv) There are serious disputed questions of fact as to whether the claim made by the petitioner vide annexure 'B' to this Sp. C.A. was a part and parcel of the Mediation Award rendered by the Advocate General or not. Another disputed question of fact is of the entitlement

of the petitioner for the amount claimed under annexure 'B'.

(v) The petitioner has accepted the Mediation Award in full and final settlement of his claim of fees against the Government from 1977 to 1989. Once the petitioner has accepted the award and since the award is binding on both the parties, it is now not open to him to claim any further fees from the respondents for the professional services rendered by him during the aforesaid period.

9. On merits, it is submitted in the reply that the dispute regarding the payment of outstanding bills of the petitioner of the professional services rendered to the respondents he wrote a letter dated 16th September, 1989, regarding the settlement of his bills in respect of fees and agreed to have the settlement of his claim of fees for a lumpsum amount by the learned Advocate General, Shri J.M. Thakore and he further declared that the Government may have the opinion of the Advocate General. The petitioner agreed that the opinion about determination of fees claim of the petitioner by Shri J.M. Thakore, Advocate General of the State will be binding on him as well as the State Government. On the basis of the consent given by the petitioner, a letter was addressed to Advocate General of the State of Gujarat, Ahmedabad by the Government on 18th September, 1989 and accordingly, the matter was referred to the Advocate General by the Government on the question as to what lumpsum amount is payable by the Government to the petitioner in respect of his claim of fees. The petitioner in respect of his claim of fees, made an aggregate claim of Rs.16,91,608-60 for the period from 1977 ending with year 1989 and the Advocate General declared the Mediation Award in the nature of Advice and Opinion regarding determination of the lumpsum amount payable by the Government of Gujarat to the petitioner in respect of the bills. The Advocate General has opined that the ends of justice would be met if the Government of Gujarat pay to the petitioner a sum of Rs.14,75,000/in full and final settlement of his claim of fees against the Government of Gujarat i.e. for the combined period commencing from the year 1977 and ending with the year 1989. The so-called award of the Advocate General is dated 30th December, 1989. The respective terms of the award have also been reproduced by the respondents in the reply. The petitioner has accepted that award and the amount as determined by the Advocate General has been paid to him on which there is no dispute between the parties.

10. I have given my thoughtful consideration to the matter.

11. The relevant part of the Mediation Award of Advocate General, reads as under:

"I further direct that the payment to be received as aforesaid by M/s. M.I. Hava & Co. be received by them in full and final settlement of all their claims against the Government of Gujarat as Solicitors to Government in respect of their bills for the year 1977 to 1989 (both inclusive) and that hereafter, M/s. M.I. Hava & Co. shall not make any claim against the Government of Gujarat for the professional work done by them for the Government as Solicitors to the Government pursuant to their appointment as hereinabove mentioned".

So that Mediation Award was in full and final payment of all the claims of the petitioner against the Government of Gujarat as Solicitors to Government in respect of their bills for the year 1977 to 1989 (both inclusive) and it has further been resolved that thereafter the petitioner shall not make any claim against the Government of Gujarat for the professional work done by him as Solicitor to the Government pursuant to the appointment as hereinabove mentioned. So on reading of the aforesaid portion of the award, which is not disputed by the petitioner, leaves no doubt in the mind of the Court that whatever may be the claim of the petitioner in respect of his professional services rendered to the Government for the year 1977 to 1989 have been fully and finally settled by the Advocate General for the amount of Rs.14,75,000/-. I find sufficient merits in the contention of the counsel for the respondent that once this dispute has been settled by arbitrator and the petitioner has accepted the same, he is estopped from raising now this dispute. It is true that the bills which were submitted by the petitioner may not include all the bills which now he has produced before this Court and in respect of which the claim has been made, but these bills are certainly of the professional services rendered by the petitioner to the State Government for the years from 1977 to 1979. So whether these bills were the subject matter of the claim of the petitioner or not is insignificant as the award is of lumpsum payment for full and final settlement of all the bills of the petitioner of the professional services rendered for the years 1977 to 1989. These words of the award, "in full and final settlement of all their claims against the

Government of Gujarat as Solicitors to Government in respect of their bills for the year 1977 to 1989 (both inclusive)", clinches the issue. So whatever claim which has been made by the petitioner of the professional services rendered by him to the respondent-State for the years 1977 to 1989 have been fully and finally settled. The matter does not rest here, but the arbitrator has further stated that hereinafter the petitioner shall not make any claim against the Government of Gujarat for the professional work done by him for Government as Solicitor to the Government pursuant to their appointment as hereinabove mentioned. Whatever it may be stated about the first part of the aforesaid award, but now this last part of the award absolutely puts a ban on the petitioner to make any claim against the Government of Gujarat for the professional work done by him for the aforesaid period. So the petitioner after accepting this award is estopped from raising any claim whatsoever of his professional services rendered to the Government as a Solicitor for the period from 1977 to 1989. As stated earlier, the claim made in this case is only for the period ending on 1989. So this claim shall be deemed to have been included and decided by the Advocate General, the arbitrator, who has been appointed with the consent of the petitioner. This writ petition is devoid of any merits. Otherwise also, this claim of the petitioner has been disputed and in view of the decision of the Hon'ble Supreme Court in the case of State Cadre Authority vs. K.S. Bajpai reported in 1990 (Supp) SCC 713, this Sp. C.A. is not maintainable. So taking into consideration the matter from any angle, the claim made by the petitioner in this Sp. C.A. is not tenable both on merits as well as on the ground that this petition is otherwise not maintainable.

12. In view of the fact that the claim of the petitioner has not been accepted by me on the merits, I not consider it to be appropriate to deal with the preliminary objections which have been raised by the respondents.

13. In the result, this Sp. C.A. fails and the same is dismissed with costs. Rule discharged.

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